THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.14390 of 2006

Dated: 23-08-2006

Between:

Kamboju Pentamma.

..... PETITIONER

AND

The Government of A.P., represented by its Secretary,
Hyderabad, and three others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE V.V.S. RAO

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ORDER:

The petitioner assails the proceedings of the fourth respondent dated 18-04-2006, whereby and whereunder the assignment of land admeasuring Ac.0.28 guntas in survey No.503 situated at Kapraipalli Village, Atmakur Mandal in Nalgonda District was cancelled.

The petitioner is a landless poor person. She applied for assignment of land to the Mandal Assignment Committee in March, 2003. After considering her application, the fourth respondent allotted said land for the purpose of agriculture. The petitioner allegedly developed the land with the help of her husband and has been enjoying the same. She also alleges that patta was granted in her favour under Laoni Rules. However, the fourth respondent issued a show-cause notice dated 20-03-2006 calling upon her to explain as to why the assignment should not be cancelled on the ground that the land is not suitable for cultivation. The petitioner's husband appeared to have submitted explanation. After considering the same, the impugned order was passed cancelling the assignment, assailing which the present writ petition is filed on various grounds.

At the stage of admission itself, the fourth respondent filed counter-affidavit. It is stated that as the poramboke land assigned to the petitioner is covered by heaps of earth and also has unused well, show-cause notice dated 20-03-2006 was issued and the assignment was cancelled after obtaining necessary permission from the Revenue Divisional Officer, Bhongir, under Section 166 (3) of the Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 Fasli.

Heard the learned counsel for the petitioner and the learned Assistant Government Pleader for Revenue (Assignment).

The assignment of land for the purpose of agriculture - there is no denial; is governed by BSO No.15 of the Andhra Pradesh Board of Revenue Standing Orders. This BSO is comprehensive covering all the aspects of the matter. Para 12 (3) of BSO 15 reads as under.

> (3) Terms and conditions of assignment: - The assignment of lands shall be subject to the following conditions.
>
> (a) Lands assigned shall be heritable but not alienable.
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> (b) Lands assigned shall be brought under cultivation within three years.
>
> (c) No land tax shall be collected for the first three years except for the extent, if any, which has already been brought under cultivation. Water rate shall, however, be charged if the lands are irrigated with Government water; and.

(d) Cultivation should be by the assignee or the members of his family or with hired labour under the supervision of himself or a member of his family.

Note:- (i) For breach of any of the conditions (a), (b), (c) above, the Government will be at liberty to resume the land and assign it to whomsoever they like.

(ii) The lands assigned to landless persons may be mortgaged to the Government or to a Co-operative Society recognized by the Government including a land Mortgage Bank, Nationalised Bank (that is a corresponding New Bank as defined in the Banking Companies Acquisition and Transfer of Undertakings Act, 1970), State Bank of India and its Subsidiaries and all Scheduled Banks, or the Panchayat Samithi for obtaining any loan for the development of the land. The loan to be advanced will be paid in installments not less than 3 depending upon the improvement effected on the land. No prior permission of the Government is necessary for such mortgage.

(iii) Tahsildars and Deputy Tahsildars in independent charge who are the assigning authorities shall be the authorities competent to order resumption in case of a breach of the conditions of grant. In regard to appeals and revisions against such orders, the provisions in B.S.O. 15 relating to the orders of the assignment shall apply also to the orders relating to resumption.

As per note (iii) to para 12(3) of BSO 15 extracted hereinabove, the competent assigning authority can cancel the assignment and resume the land only in the event of breach of conditions of assignment. If the land is assigned for the purpose of agriculture, merely on the ground that the land is not suitable for cultivation, assignment cannot be cancelled. The petitioner asserts that she with the help of her husband has already developed the land and made the land fit for cultivation. Even otherwise, the presence of unused well or heaps of earth, in the opinion of this Court, does not render the land uncultivable. If the land is not suitable for cultivation, the assignee can request for allotment of alternative site. That is not the case here. Therefore, this Court holds that the impugned order of cancellation is without jurisdiction, as no such power is conferred on Mandal Revenue Officer (MRO) to cancel the assignment of land for which such order was passed, and the same is accordingly set aside. It may also be observed that if the petitioner fails to cultivate the land or alienates the land to others or violates the other conditions of assignment, it is always open to MRO or any other competent authority to cancel the assignment.

The writ petition, for the above reasons, is accordingly allowed. No costs.

V.V.S.RAO, J

23rd August, 2006
ghn